

SENATE No. 967

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone Creem

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the elective share of surviving spouses.

PETITION OF:

NAME:

Cynthia Stone Creem

DISTRICT/ADDRESS:

First Middlesex and Norfolk

SENATE No. 967

By Ms. Creem, a petition (accompanied by bill, Senate, No. 967) of Cynthia Stone Creem for legislation relative to the elective share of surviving spouses. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 879 OF 2019-2020.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act relative to the elective share of surviving spouses.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. PART 2, Sections 2-201 to 2-299. [Reserved] of chapter 190B of the
2 General Laws, as appearing in the 2016 Official Edition, is hereby amended to read in its entirety
3 as follows:

4 Section 2-201. Definitions.

5 In this Part:

6 (1) As used in sections other than Section 2-205, “decedent’s nonprobate transfers to
7 others” means the amounts that are included in the augmented estate under Section 2-205.

8 (2) “Fractional interest in property held in joint tenancy with the right of survivorship”
9 whether the fractional interest is unilaterally severable or not, means the fraction, the numerator

of which is one and the denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who survive the decedent and which, if the decedent was not a joint tenant, is the number of joint tenants.

(3) "Marriage" as it relates to a transfer by the decedent during marriage, means any marriage of the decedent to the decedent's surviving spouse.

(4) "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that he or she possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is deemed to have a beneficial interest in the property.

(5) "Power" or "power of appointment" includes a power to designate the beneficiary of a beneficiary designation.

(6) "Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent, whether or not he or she then had the capacity to exercise the power, held a power to create a present or future interest in himself or herself, his or her creditors, his or her estate, or creditors of his or her estate, and includes a power to revoke or invade the principal of a trust or other property arrangement.

(7) "Probate estate" means property that would pass by intestate succession if the decedent died without a valid will.

(8) "Property" includes values subject to a beneficiary designation.

(9) “Right to income” includes a right to payments under a commercial or private annuity, an annuity trust, a unitrust, or a similar arrangement.

(10) “Transfer” as it relates to a transfer by or of the decedent, includes (i) an exercise or release of a presently exercisable general power of appointment held by the decedent, (ii) a lapse at death of a presently exercisable general power of appointment held by the decedent, and (iii) an exercise, release, or lapse of a general power of appointment that the decedent created in himself or herself and of a power described in Section 2-205(2)(ii) that the decedent conferred on a nonadverse party.

(11) For purposes of Sections 2-201 through 2-214 of this Part, ownership interests of a party during lifetime shall be determined in accordance with the following rules:

(a) “Net contribution” of a party means the sum of all deposits to an account made by or for the party, less all payments from the account made to or for the party which have not been paid to or applied for the use of another party and a proportionate share of any charges deducted from the account, plus a proportionate share of any interest or dividends earned, whether or not included in the current balance.

(b) An account belongs to the parties in proportion to the net contribution of each to the sums of deposit, unless there is clear and convincing evidence of a different intent. As between parties married to each other, in the absence of proof otherwise, the net contribution of each is presumed to be an equal amount.

(c) A beneficiary in an account having a POD (pay on death) designation has no right to sums on deposit during the lifetime of any party.

(d) An agent in an account with an agency designation has no beneficial right to sums on deposit.

Section 2-202. Elective Share.

(a) [Elective-Share Amount.] Except as provided in section thirty-six of chapter two hundred and nine, the surviving spouse of a decedent who dies domiciled in the Commonwealth has a right of election, under the limitations and conditions stated in this Part, to take an elective-share amount equal to 50 percent of the value of the marital-property portion of the augmented estate.

(b) [Supplemental Elective-Share Amount.] If the sum of the amounts described in Sections 2-207, 2-209(a)(1), and that part of the elective-share amount payable from the decedent's net probate estate and nonprobate transfers to others under Section 2-209(c) and (d) is less than \$75,000, the surviving spouse is entitled to a supplemental elective-share amount equal to \$75,000, minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's net probate estate and from recipients of the decedent's nonprobate transfers to others in the order of priority set forth in Section 2-209(c) and (d).

(c) [Effect of Election on Statutory Benefits.] If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's exempt property and family allowance, if any, are not charged against but are in addition to the elective-share and supplemental elective-share amounts.

(d) [Non-Domiciliary.] The right, if any, of the surviving spouse of a decedent who dies domiciled outside the Commonwealth to take an elective share in property in the Commonwealth is governed by the law of the decedent's domicile at death.

Section 2-203. Composition of the Augmented Estate; Marital-Property Portion.

(a) Subject to Section 2-208, the value of the augmented estate, to the extent provided in Sections 2-204, 2-205, 2-206, and 2-207, consists of the sum of the values of all property, whether real or personal, movable or immovable, tangible or intangible, wherever situated, that constitute:

(1) the decedent's net probate estate;

(2) the decedent's nonprobate transfers to others;

(3) the decedent's nonprobate transfers to the surviving spouse; and

(4) the surviving spouse's property and nonprobate transfers to others.

(b) The value of the marital-property portion of the augmented estate consists of the sum of the values of the four components of the augmented estate as determined under subsection (a) multiplied by the following percentage:

If the decedent and the spouse were married to each other: The percentage is:

Less than 1 year 3%

1 year but less than 2 years 6%

2 years but less than 3 years 12%

90	3 years but less than 4 years	18%
91	4 years but less than 5 years	24%
92	5 years but less than 6 years	30%
93	6 years but less than 7 years	36%
94	7 years but less than 8 years	42%
95	8 years but less than 9 years	48%
96	9 years but less than 10 years	54%
97	10 years but less than 11 years	60%
98	11 years but less than 12 years	68%
99	12 years but less than 13 years	76%
100	13 years but less than 14 years	84%
101	14 years but less than 15 years	92%
102	15 years or more	100%

103 Section 2-204. Decedent's Net Probate Estate.

104 The value of the augmented estate includes the value of the decedent's probate estate,
105 reduced by funeral and administration expenses and family allowances, exempt property, and
106 enforceable claims.

107 Section 2-205. Decedent's Nonprobate Transfers to Others.

The value of the augmented estate includes the value of the decedent's nonprobate transfers to others, not included under Section 2-204, of any of the following types, in the amount provided respectively for each type of transfer:

(1) Property owned or owned in substance by the decedent immediately before death that passed outside probate at the decedent's death. Property included under this category consists of:

(i) Property over which the decedent alone, immediately before death, held a presently exercisable general power of appointment. The amount included is the value of the property subject to the power, to the extent the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse.

(ii) The decedent's fractional interest in property held by the decedent in joint tenancy with the right of survivorship. The amount included is the value of the decedent's fractional interest, to the extent the fractional interest passed by right of survivorship at the decedent's death to a surviving joint tenant other than the decedent's surviving spouse.

(iii) The decedent's ownership interest in property or accounts held in POD, TOD, or co ownership registration with the right of survivorship. The amount included is the value of the decedent's ownership interest, to the extent the decedent's ownership interest passed at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse.

(iv) Proceeds of insurance, including accidental death benefits, on the life of the decedent, if the decedent owned the insurance policy immediately before death or if and to the extent the decedent alone and immediately before death held a presently exercisable general

power of appointment over the policy or its proceeds. The amount included is the value of the proceeds, to the extent they were payable at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse.

(2) Property transferred in any of the following forms by the decedent during marriage:

(i) Any irrevocable transfer in which the decedent retained the right to the possession or enjoyment of, or to the income from, the property if and to the extent the decedent's right terminated at or continued beyond the decedent's death. The amount included is the value of the fraction of the property to which the decedent's right related, to the extent the fraction of the property passed outside probate to or for the benefit of any person other than the decedent's estate or surviving spouse.

(ii) Any transfer in which the decedent created a power over income or property, exercisable by the decedent alone or in conjunction with any other person, or exercisable by a nonadverse party, to or for the benefit of the decedent, creditors of the decedent, the decedent's estate, or creditors of the decedent's estate. The amount included with respect to a power over property is the value of the property subject to the power, and the amount included with respect to a power over income is the value of the property that produces or produced the income, to the extent the power in either case was exercisable at the decedent's death to or for the benefit of any person other than the decedent's surviving spouse or to the extent the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse. If the power is a power over both income and property and the preceding sentence produces different amounts, the amount included is the greater amount.

(3) Property that passed during marriage and during the two year period next preceding the decedent's death as a result of a transfer by the decedent if the transfer was of any of the following types:

(i) Any property that passed as a result of the termination of a right or interest in, or power over, property that would have been included in the augmented estate under paragraph (1)(i), (ii), or (iii), or under paragraph (2), if the right, interest, or power had not terminated until the decedent's death. The amount included is the value of the property that would have been included under those paragraphs if the property were valued at the time the right, interest, or power terminated, and is included only to the extent the property passed upon termination to or for the benefit of any person other than the decedent or the decedent's estate, spouse, or surviving spouse. As used in this subparagraph, "termination," with respect to a right or interest in property, occurs when the right or interest terminated by the terms of the governing instrument or the decedent transferred or relinquished the right or interest, and, with respect to a power over property, occurs when the power terminated by exercise, release, lapse, default, or otherwise, but, with respect to a power described in paragraph (1)(i), "termination" occurs when the power terminated by exercise or release, but not otherwise.

(ii) Any transfer of or relating to an insurance policy on the life of the decedent if the proceeds would have been included in the augmented estate under paragraph (1)(iv) had the transfer not occurred. The amount included is the value of the insurance proceeds to the extent the proceeds were payable at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse.

173 (iii) Any transfer of property, to the extent not otherwise included in the
174 augmented estate, made to or for the benefit of a person other than the decedent's surviving
175 spouse. The amount included is the value of the transferred property to the extent the transfers to
176 any one donee in either of the two years exceeded the amount excludable from taxable gifts
177 under 26 U.S.C. Section 2503(b) or its successor on the date next preceding the date of the
178 decedent's death.

179 Section 2-206. Decedent's Nonprobate Transfers to the Surviving Spouse.

180 Excluding property passing to the surviving spouse under the federal Social Security
181 system, the value of the augmented estate includes the value of the decedent's nonprobate
182 transfers to the decedent's surviving spouse, which consist of all property that passed outside
183 probate at the decedent's death from the decedent to the surviving spouse by reason of the
184 decedent's death, including:

185 (1) the decedent's fractional interest in property held as a joint tenant with the right of
186 survivorship, to the extent that the decedent's fractional interest passed to the surviving spouse as
187 surviving joint tenant,

188 (2) the decedent's ownership interest in property or accounts held in co ownership
189 registration with the right of survivorship, to the extent the decedent's ownership interest passed
190 to the surviving spouse as surviving co owner, and

191 (3) all other property that would have been included in the augmented estate under
192 Section 2 205(1) or (2) had it passed to or for the benefit of a person other than the decedent's
193 spouse, surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors.

Section 2-207. Surviving Spouse's Property and Nonprobate Transfers to Others.

(a) [Included Property.] Except to the extent included in the augmented estate under Section 2 204 or 2 206, the value of the augmented estate includes the value of:

(1) property that was owned by the decedent's surviving spouse at the decedent's death, including:

(i) the surviving spouse's fractional interest in property held in joint tenancy with the right of survivorship,

(ii) the surviving spouse's ownership interest in property or accounts held in co ownership registration with the right of survivorship, and

(iii) property that passed to the surviving spouse by reason of the decedent's death, but not including the spouse's right to family allowance, exempt property, or payments under the federal Social Security system; and

(2) property that would have been included in the surviving spouse's nonprobate transfers to others, other than the spouse's fractional and ownership interests included under subsection (a)(1)(i) or (ii), had the spouse been the decedent.

(b) [Time of Valuation.] Property included under this section is valued at the decedent's death, taking the fact that the decedent predeceased the spouse into account, but, for purposes of subsection (a)(1)(i) and (ii), the values of the spouse's fractional and ownership interests are determined immediately before the decedent's death if the decedent was then a joint tenant or a co owner of the property or accounts. For purposes of subsection (a)(2), proceeds of insurance

that would have been included in the spouse's nonprobate transfers to others under Section 205(1)(iv) are not valued as if he or she were deceased.

(c) [Reduction for Enforceable Claims.] The value of property included under this section is reduced by enforceable claims against the surviving spouse.

Section 2-208. Exclusions, Valuation, and Overlapping Application.

(a) [Exclusions.] The value of any property is excluded from the decedent's nonprobate transfers to others (i) to the extent the decedent received adequate and full consideration in money or money's worth for a transfer of the property or (ii) if the property was transferred with the written joinder of, or if the transfer was consented to in writing before or after the transfer by, the surviving spouse.

(b) [Valuation.] The value of property:

(1) included in the augmented estate under Section 2-205, 2-206, or 2-207 is reduced in each category by enforceable claims against the included property; and

(2) includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal Social Security system.

(c) [Overlapping Application; No Double Inclusion.] In case of overlapping application to the same property of the paragraphs or subparagraphs of Section 2-205, 2-206, or 2-207, the property is included in the augmented estate under the provision yielding the greatest value, and under only one overlapping provision if they all yield the same value.

Section 2-209. Sources from Which Elective Share Payable.

(a) [Elective-Share Amount Only.] In a proceeding for an elective share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any contributions due from the decedent's net probate estate and recipients of the decedent's nonprobate transfers to others:

(1) amounts included in the augmented estate under Section 2-204 which pass or have passed to the surviving spouse by testate or intestate succession and amounts included in the augmented estate under Section 2-206; and

(2) the marital-property portion of amounts included in the augmented estate under Section 2-207

(b) [Marital Property Portion.] The marital-property portion under subsection (a)(2) is computed by multiplying the value of the amounts included in the augmented estate under Section 2-207 by the percentage of the augmented estate set forth in the schedule in Section 2-203(b) appropriate to the length of time the spouse and the decedent were married to each other.

(c) [Unsatisfied Balance of Elective-Share Amount; Supplemental Elective-Share Amount.] If, after the application of subsection (a), the elective-share amount is not fully satisfied, or the surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's net probate estate, other than assets passing to the surviving spouse by testate or intestate succession, and in the decedent's nonprobate transfers to others under Section 2-205(1), (2), and (3)(i) or (iii), are applied first to satisfy the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent's net probate estate and that portion of the decedent's nonprobate transfers to others are so applied that liability for the

unsatisfied balance of the elective-share amount or for the supplemental elective-share amount is apportioned among the recipients of the decedent's net probate estate and of that portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

(d) [Unsatisfied Balance of Elective-Share and Supplemental Elective-Share Amount.]

If, after the application of subsections (a) and (c), the elective-share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's nonprobate transfers to others is so applied that liability for the unsatisfied balance of the elective-share or supplemental elective-share amount is apportioned among the recipients of the remaining portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

(e) [Unsatisfied Balance Treated as General Pecuniary Devise.] The unsatisfied balance of the elective-share or supplemental elective-share amount as determined under subsection (c) or (d) is treated as a general pecuniary devise for purposes of Section 3-904.

Section 2-210. Personal Liability of Recipients.

(a) Only original recipients of the decedent's nonprobate transfers to others, and the donees of the recipients of the decedent's nonprobate transfers to others, to the extent the donees have the property or its proceeds, are liable to make a proportional contribution toward satisfaction of the surviving spouse's elective-share or supplemental elective-share amount. A person liable to make contribution may choose to give up the proportional part of the decedent's nonprobate transfers to him or her or to pay the value of the amount for which he or she is liable.

(b) If any section or part of any section of this Part is preempted by federal law with respect to a payment, an item of property, or any other benefit included in the decedent's

nonprobate transfers to others, a person who, not for value, receives the payment, item of property, or any other benefit is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of that item of property or benefit, as provided in Section 2-209, to the person who would have been entitled to it were that section or part of that section not preempted.

Section 2-211. Proceeding for Elective Share; Time Limit.

(a) Except as provided in subsection (b), the election must be made by filing in the Court and mailing or delivering to the personal representative, if any, a petition for the elective share within nine months after the date of the decedent's death, or within six months after the probate of the decedent's will, whichever limitation later expires. The surviving spouse must give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective share. Except as provided in subsection (b), the decedent's nonprobate transfers to others are not included within the augmented estate for the purpose of computing the elective-share, if the petition is filed more than nine months after the decedent's death.

(b) Within nine months after the decedent's death, the surviving spouse may petition the court for an extension of time for making an election. If, within nine months after the decedent's death, the spouse gives notice of the petition to all persons interested in the decedent's nonprobate transfers to others, the court for cause shown by the surviving spouse may extend the time for election. If the court grants the spouse's petition for an extension, the decedent's nonprobate transfers to others are not excluded from the augmented estate for the purpose of computing the elective-share and supplemental elective-share amounts, if the spouse makes an

election by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within the time allowed by the extension.

(c) The surviving spouse may withdraw his or her demand for an elective share at any time before entry of a final determination by the court.

(d) After notice and hearing, the court shall determine the elective-share and supplemental elective-share amounts, and shall order its payment from the assets of the augmented estate or by contribution as appears appropriate under Sections 2-209 and 2-210. If it appears that a fund or property included in the augmented estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he or she would have been under Sections 2-209 and 2-210 had relief been secured against all persons subject to contribution.

(e) An order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this State or other jurisdictions.

Section 2-212. Right of Election Personal to Surviving Spouse; Incapacitated Surviving Spouse.

(a) [Surviving Spouse Must Be Living at Time of Election.] The right of election may be exercised only by a surviving spouse who is living when the petition for the elective share is filed in the court under Section 2-211(a). If the election is not exercised by the surviving spouse

personally, it may be exercised on the surviving spouse's behalf by his or her conservator, guardian, or agent under the authority of a power of attorney.

(b) [Incapacitated Surviving Spouse.] If the election is exercised on behalf of a surviving spouse who is an incapacitated person, that portion of the elective-share and supplemental elective-share amounts due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others under Section 2-209(c) and (d) must be placed in a custodial trust for the benefit of the surviving spouse under the provisions of the Massachusetts Uniform Custodial Trust Act, except as modified below. For the purposes of this subsection, an election on behalf of a surviving spouse by an agent under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an incapacitated person. For purposes of the custodial trust established by this subsection, (i) the electing guardian, conservator, or agent is the custodial trustee, (ii) the surviving spouse is the beneficiary, and (iii) the custodial trust is deemed to have been created by the decedent spouse by written transfer that takes effect at the decedent spouse's death and that directs the custodial trustee to administer the custodial trust as for an incapacitated beneficiary.

(c) [Custodial Trust.] For the purposes of subsection (b), the Massachusetts Uniform Custodial Trust Act must be applied as if Section 6(b) thereof were repealed and Sections 2(e), 9(b), and 17(a) were amended to read as follows:

(1) Neither an incapacitated beneficiary nor anyone acting on behalf of an incapacitated beneficiary has a power to terminate the custodial trust; but if the beneficiary regains capacity, the beneficiary then acquires the power to terminate the custodial trust by

delivering to the custodial trustee a writing signed by the beneficiary declaring the termination.
If not previously terminated, the custodial trust terminates on the death of the beneficiary.

(2) If the beneficiary is incapacitated, the custodial trustee shall expend so much or all of the custodial trust property as the custodial trustee considers advisable for the use and benefit of the beneficiary and individuals who were supported by the beneficiary when the beneficiary became incapacitated, or who are legally entitled to support by the beneficiary. Expenditures may be made in the manner, when, and to the extent that the custodial trustee determines suitable and proper, without court order but with regard to other support, income, and property of the beneficiary and benefits of medical or other forms of assistance from any state or federal government or governmental agency for which the beneficiary must qualify on the basis of need.

(3) Upon the beneficiary's death, the custodial trustee shall transfer the unexpended custodial trust property in the following order: (i) under the residuary clause, if any, of the will of the beneficiary's predeceased spouse against whom the elective share was taken, as if that predeceased spouse died immediately after the beneficiary; or (ii) to that predeceased spouse's heirs under Section 2-711 of Massachusetts Uniform Probate Code.

Section 2-213. Waiver of Right to Elect and of Other Rights.

(a) [Scope]. A waiver is enforceable against the surviving spouse if it is enforceable under (i) this section or (ii) the law governing the enforceability of the waiver where and when it was executed.

(b) [Waiver Before or After Marriage]. The right of election of a surviving spouse and the rights of the surviving spouse to exempt property, family allowance, and intestate share, or

any of them, may be waived, wholly or partially, before or after marriage, unilaterally or pursuant to an agreement contained in a record signed by the surviving spouse.

(c) [Consideration Unnecessary]. Consideration is not necessary to the enforcement of a waiver.

(d) [Requirements for Enforceability; Burden of Persuasion]. For a waiver to be enforceable against the surviving spouse, the spouse's waiver must have been informed and not obtained by fraud, undue influence, or duress. Except as otherwise provided in subsection (e), the enforcing party has the burden of persuasion to establish that the spouse's waiver was informed. The surviving spouse has the burden of persuasion to establish that the waiver was obtained by fraud, undue influence, or duress.

(e) [Presumption]. A rebuttable presumption arises that the surviving spouse's waiver was informed, shifting the burden of persuasion to the surviving spouse to establish that his or her waiver was not informed, if the enforcing party establishes that:

(1) before the waiver was executed, (i) the surviving spouse knew, at least approximately, the decedent's assets and asset values, income, and liabilities; or (ii) the decedent or his or her representative provided in timely fashion to the surviving spouse a written statement accurately disclosing the decedent's significant assets and asset values, income, and liabilities; and either

(2) the surviving spouse was represented by independent legal counsel; or

(3) if the surviving spouse was not represented by independent legal counsel, (i) the decedent or the decedent's representative advised the surviving spouse, in timely fashion, to

386 obtain independent legal counsel, and offered to advance sufficient funds to pay for the
387 reasonable costs of the surviving spouse's representation or to reimburse those costs; and (ii) the
388 waiver stated, in language easily understandable by an adult of ordinary intelligence with no
389 legal training, the nature of any rights or claims otherwise arising at death that were altered by
390 the waiver, and the nature of that alteration.

391 (f) [Unconscionability]. A waiver is unenforceable if it was unconscionable when it was
392 executed. An issue of unconscionability of a waiver is for decision by the court as a matter of
393 law.

394 (g) [Waiver of "All Rights"]. Unless it provides to the contrary, a waiver of "all rights",
395 or equivalent language, in the property or estate of a present or prospective spouse or a complete
396 property settlement entered into after or in anticipation of separation or divorce is a waiver of all
397 rights of elective share, exempt property, and family allowance by each spouse in the property of
398 the other and a renunciation by each of all benefits that would otherwise pass to him or her from
399 the other by intestate succession or by virtue of any will executed before the waiver or property
400 settlement.

401 Section 2-214. Protection of Payors and Other Third Parties.

402 (a) Although under Section 2 205 a payment, item of property, or other benefit is
403 included in the decedent's nonprobate transfers to others, a payor or other third party is not liable
404 for having made a payment or transferred an item of property or other benefit to a beneficiary
405 designated in a governing instrument, or for having taken any other action in good faith reliance
406 on the validity of a governing instrument, upon request and satisfactory proof of the decedent's
407 death, before the payor or other third party received written notice from the surviving spouse or

spouse's representative of an intention to file a petition for the elective share or that a petition for the elective share has been filed. A payor or other third party is liable for payments made or other actions taken after the payor or other third party received written notice of an intention to file a petition for the elective share or that a petition for the elective share has been filed.

(b) A written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property, and, upon its determination under Section 2 211(d), shall order disbursement in accordance with the determination. If no petition is filed in the court within the specified time under Section 2 211(a) or, if filed, the demand for an elective share is withdrawn under Section 2 211(c), the court shall order disbursement to the designated beneficiary. Payments or transfers to the court or deposits made into court discharge the payor or other third party from all claims for amounts so paid or the value of property so transferred or deposited.

(c) Upon petition to the probate court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this Part.

431 SECTION 2. Section 2-801 of said chapter 190B, is hereby amended by striking out
432 subsection (j) and inserting in place thereof the following subsection:

433 (j) Except for the provisions of subsection (h), this section shall not abridge the right of
434 any person to disclaim, waive, release, renounce, or abandon any interest in property under
435 section 2-201 or any other statute or rule of law.

436 SECTION 3. Sections 15 and 16 of chapter 191 of the General Laws are hereby repealed.

437 SECTION 4. This act shall apply to pre-existing governing instruments, except that none
438 of its provisions shall apply to governing instruments that became irrevocable prior to the
439 effective date of this act.